



**SKM v RCM (Civil Appeal 46 of 2023) [2024] KEHC 14954 (KLR) (28 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14954 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CIVIL APPEAL 46 OF 2023  
RL KORIR, J  
NOVEMBER 28, 2024**

**BETWEEN**

**SKM ..... APPELLANT**

**AND**

**RCM ..... RESPONDENT**

*(Being an Appeal from the Ruling of the Senior Principal Magistrate, Boke E. at the Senior Principal Magistrate's Court at Bomet, Civil Suit Number E92 of 2017)*

**RULING**

1. This Ruling is in respect of an Appeal that this court has adjudged fit for summary dismissal under section 79B of the *Civil Procedure Act*. The court elected to write the Ruling for the benefit of the Appellant who is unrepresented.
2. By Plaintiff dated 5th December 2017 and date stamped 4th December 2017, the Appellant (then Plaintiff) sued the Respondent (then Defendant) for damages due to fraud. He claimed that the Defendant whom he disputed was his wife had born some children out of marriage and made him bear the cost of raising them while knowing that they were not his children.
3. The Appellant did not prosecute his case and a Notice to Show Cause dated 7th March 2019 was issued. The Appellant failed to show cause why his suit should not be dismissed and the trial court dismissed the suit on 4th April 2019.
4. The Appellant then filed an Application for reinstatement of the suit dated 3rd January 2020. According to the record, the Application was not prosecuted. The Appellant subsequently filed another Application dated 16th August 2023. When the said Application was presented before the trial court, the court observed that the suit had earlier been dismissed.
5. On 21st August 2023, the trial court ruled that the matter stood dismissed and that the Appellant should prosecute his Application for reinstatement because the suit no longer existed.



6. Being aggrieved with the Ruling above, the Appellant appealed against the decision and asked this court to set the Ruling aside and allow the reinstatement of his suit in the trial court.
7. Admission of Appeals in this court are governed by section 79B of the [Civil Procedure Act](#) which provides:-

Before an appeal from a subordinate court to the High Court is heard, a judge of the High Court shall peruse it, and if he considers that there is no sufficient ground for interfering with the decree, part of a decree or order appealed against he may, notwithstanding section 79C, reject the appeal summarily.

8. This means that when an Appeal is presented for admission, the Appeal can be summarily rejected if the Judge finds no sufficient reason to interfere with the order appealed against. On the other hand, it also means that the Appeal can be admitted for hearing if a Judge finds no cause for summary rejection.
9. I have gone through the Appeal and it is my finding that the present Appeal is ripe for summary rejection. As stated above, the Appellant's suit was dismissed for want of prosecution on 4th April 2019 and stands dismissed to date because the Appellant's Application for reinstatement has not been prosecuted. The trial court's Ruling on 21st August 2023 that the Appellant should prosecute his Application for reinstatement was therefore proper and just. Without an existing suit, the Application had no legs on which to stand. I find no reason to interfere with the court's Ruling which merely restated the correct position in law and procedure.
10. As I pen off, I would encourage the Appellant, if he wants to prosecute his suit or any Application under the suit, to proceed and prosecute his Application to reinstate the suit in the lower court. The procedure of filing and prosecuting cases in our courts is governed by rules as provided for in the [Civil Procedure Act](#) and the Civil Procedure Rules 2010. The Appellant is encouraged to consider those procedures and rules as the handmaiden of justice and adhere to them. They exist for expeditious delivery of justice and for good order in proceedings.
11. In the end, the Amended Memorandum of Appeal dated 21st September 2023 is summarily dismissed with no orders as to costs.
12. The Appeal file is marked closed while the trial court file is returned to the lower court registry where the Applicant may take a mention date before the subordinate court.

Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED THIS 28TH DAY OF NOVEMBER, 2024.**

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**R. LAGAT-KORIR**

**JUDGE**

Ruling delivered in the presence of the Appellant and the Respondent. Siele (Court Assistant).

